



**DEPARTMENT OF THE ARMY
REGIONAL GENERAL PERMIT:
SWG-2002-02904**



A. AUTHORIZATION:

Permit: Regional General Permit (RGP) for Work in Navigable Waters of the United States (US) for the Construction of Residential or Commercial Pile-Supported Piers.

Issuing Office: Department of the Army (DA), US Army Corps of Engineers (Corps), Southwest Division (SWD), Galveston District (SWG)

Effective Date: 1 January 2021

Permittee: General Public

Geographic Location: Within navigable waters of the US within the SWG area of responsibility boundaries, excluding waters located in Louisiana.

General Permit Expiration: This permit will expire on **31 December 2025**. If the work authorized by a specific site approval is not started, or if it is not completed within 2 years from its approval date, the authorization, if not previously revoked or specifically extended, shall automatically expire.

B. REGIONAL GENERAL PERMIT (RGP) APPLICABILITY:

RGP Regulatory Statutes: Work and/or the placement of structures in/or affecting navigable waters of the US authorized under this general permit is subject to jurisdiction pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403; Section 10).

RGP Regulated Activities Description: This general permit authorizes work in navigable waters of the US for the construction, repair, rehabilitation, maintenance, modification, and replacement, of residential or commercial pile-supported piers for single or multifamily residences for single littoral parcels including lodging facilities.

RGP Restrictions: This general permit **does not** authorize:

- The placement of dredged and/or fill material into jurisdictional waters of the US, including special aquatic sites;
- Permanent losses of waters of the US, including special aquatic sites;
- "Prop-Washing";
- Dredging;
- The placement of enclosed buildings, living quarters, toilets, fuel-dispensing or sanitary pump-out facilities;
- Covered or enclosed second story;
- Floating piers or terminal structures;
- High-pressure jetting of pilings;

Single and Complete Project: The authorized work must be part of a single and complete project.

Regulatory Discretion: If the determination is made that the adverse effects of the proposed work are more than minimal, the applicant will then be notified that either:

- The project does not qualify for authorization under the general permit and instruct the applicant on the procedures to seek authorization under an individual permit;
- The project is verified under the general permit subject to the applicant's submission of an approved mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or,
- The project is verified under the general permit with specific modifications or conditions.

C. PRECONSTRUCTION NOTIFICATION (PCN):

Application Review Process: A PCN is a request submitted by the project proponent (applicant) to the Corps for confirmation that a particular activity is authorized by a general permit. The request may be a permit application (DA Form 4345), letter, or similar document that includes information about the proposed work and its anticipated environmental effects. A PCN is required by the terms and conditions of this general permit. Work in waters of the US cannot begin until written approval has been obtained by the applicant from the DE.

Completeness Determination: If the application is determined to be incomplete, the applicant will be notified requesting specific information surrounding the activity. The applicant will have a 30-day period to gather and submit the requested information back to the Corps. If the requested information is not submitted in full after that 30-day period, the Corps will withdraw the permit application without prejudice for the applicant's right to reapply at a later date. However, once the application has been withdrawn, the Corps will only accept a resubmitted application if the applicant can provide all of the information previously requested.

Requirements for a Federally Complete PCN: In order to be considered federally complete, the PCN shall include:

- A completed and signed DA application form (*DA Form ENG 4345*), or other suitable means of submittal (i.e. letter, report, etc.) that has the following information detailed:
 - The official designated point of contact (POC) for the application to be named on the final permit decision, address, telephone, and email (if applicable);
 - Signed statement acknowledging the use of a consultant with their contact information (if applicable);
 - Longitude and Latitude of the proposed location of the structure in decimal degrees;
 - A detailed description of the construction methods in the order of commencement; and,
 - A copy of all DA authorizations previously issued for the work area.

- A vicinity map, plan view, and typical cross section drawings showing all impacts to waters of the US. Engineered and/or colored drawings will be accepted on a case by case basis; however, general and typical drawings will be suitable if found legible. Drawings shall include:
 - A vicinity map with the location of the proposed activity so that geographic coordinates (decimal degrees) can be verified;
 - A top view (plan view) drawing showing the property, its owner(s), length and width dimensions of all structures and their relationship to adjacent property lines and existing structures and the distance from the end of the structure(s) to the centerline of a road or other fixed reference point;
 - Top view and cross-section drawings depicting the proposed distance the structure will extend into the water body as measured from the Mean High Water (MHW) line in tidal areas and the Ordinary High Water (OHW) mark in non-tidal areas;
 - A cross-section drawing that depicts the height of the top of the deck above MHW or OHW, depth of water at the beginning of the terminal structure as measured from the MHW line or OHW mark, presence or absence of vegetation on bottom, and height and length of all structures;
 - The waterfront width of the upland property;
 - The distance from shore to the top edge cut of any navigational channel in the immediate project vicinity;
 - An aquatic resource delineation map that clearly demonstrates the locations and boundaries of any aquatic resources (i.e. wetlands, submerged aquatic vegetation (SAV), mudflats, and/or other special aquatic sites defined in 40 CFR 230) located within 50 feet of any portion of the proposed project; and
 - If applicable, a plan view map of any mapped critical habitat designated under Section 7 of the Endangered Species Act located within 150 feet of the proposed activity.
- A statement that the work will be conducted in compliance with the terms and conditions of this general permit;
- If applicable, a note from the applicant's physician stating the structure's walkway needs to be in compliance with the American with Disabilities Act (ADA) and that the walkway needs to be 6 feet in width;
- A statement of estimated start and completion dates for the activity.

E. GENERAL CONDITIONS:

1. **Future Operations by the US:** The permittee understands and agrees that, if future operations by the US require the removal, relocation, or other alteration, of the structure and/or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the US. No claim shall be made against the US on account of any such removal or alteration.

2. **Navigation:** The permittee will not prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit. No structures or fill will be allowed to obstruct any navigation channels or impact any federal properties.
3. **Aids to Navigation:** Unless prohibited by law, the permittee will install, display, and maintain, at the expense of the permittee, light and signals on all structures and/or work authorized herein as may be prescribed by the US Coast Guard. Aids to navigation will be permitted and placed in accordance with US Coast Guard Regulation 33 C.F.R. 66.
4. **Structure Lighting:** No bright lights that may be erected on the permitted structure shall be directed toward a navigable waterway in a manner that could hinder nighttime users of this waterway.
5. **Structures in Canals:** Structures constructed on canals or adjacent to channels must not extend more than 25 percent of the waterway width or may not extend beyond neighboring existing structures, whichever is less.
6. **Structures in Federal Channels:** The minimum clearance between any structure and the near bottom edge of a Federal project channel will not be less than that prescribed in the authorizing Federal project document or SWG's Federal project channel setback standard operating procedures.
7. **Claims against the United States:** Projects located adjacent to a Federal Channel will be exposed to both private and commercial vessel traffic. By accepting this permit the permittee acknowledges and agrees that the Government will not be held responsible for personal injury or other damages caused to structures or any personal or real property located within the Federal Maintenance ROW. Additionally, any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the US. Potential damages include, but are not limited to: wakes, undercutting, erosion, barge/vessel/dredge damage, vessel collisions, or wave action.
8. **Cultural and Historic Resources:** The Corps will review all activities proposed under this general permit for cultural resources requirements, and, when appropriate, coordinate these activities with the Texas State Historic Preservation Officer (SHPO).
 - a. In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
 - b. If potential historic properties are located in the project area, permit specific conditions may be implemented for additional protection to avoid these resources by a sufficient margin as designated by the Corps and the SHPO. If avoidance of the potential historic property is not feasible further investigations may be required.
 - c. The activity shall not begin until the Corps notifies the prospective permittee that the activity has no potential to cause effects to historic properties and/or that NHPA Section 106 consultation has been completed and that the activity is authorized.

- 9. Unknown Historic and Archeological Remains:** If any previously unknown historic or archeological remains are discovered while accomplishing the activity authorized by this general permit, you must immediately cease and desist any activity on the project and notify the Galveston District Regulatory Division of what you have found. The Corps will initiate the Federal, State, and Tribal coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places. No work shall continue until all required coordination has been completed and written notification by the Corps has been provided.
- 10. Tribal Rights:** Any activity proposed under this general permit may not cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
- 11. Threatened and Endangered Species:** Work authorized under this general permit will not directly or indirectly jeopardize the continued existence of a listed threatened and/or endangered (T&E) species and/or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA); or which will directly or indirectly destroy or adversely modify the critical habitat of such species.
- 12. Designated Critical Habitat:** All structures and/or work must maintain a distance of 150 feet from Federally designated critical habitat.
- 13. Whooping Cranes:** All proposed structures located in portions of Aransas, Copano, St. Charles, Mesquite, San Antonio, Espiritu Santo & Matagorda Bays or any secondary or tertiary bay of these systems shall abide the following:

 - a. Coordination with the U.S. Fish and Wildlife Service Corpus Christi Ecological Field Office must be completed prior to application to consider potential impacts to the federally listed, endangered whooping cranes (*Grus americana*);
 - b. Construction, installation, and maintenance are prohibited from October 15th to April 15th to protect whooping cranes which winter in the Aransas National Wildlife Refuge Area;
 - c. All permanent structures in whooping crane habitat areas must be no greater than 15 feet in height above mean sea level.
- 14. Sea Turtle Avoidance Measures:** Construction, installation, and maintenance to structures authorized under this general permit are prohibited in sea turtle nesting habitat during the sea turtle nesting period from March 15th to September 30th.
- 15. Migratory Bird Breeding Areas:** Activities in waters of the US that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable. Work authorized under this general permit is prohibited within 1,000 feet of identified bird rookery islands between February 14th and September 1st.
- 16. Non-Special Aquatic Sites:** The following applies to structures that are constructed in navigable waters of the US over submerged areas that does not occupy special aquatic sites such as vegetated shallows, wetlands, and oyster reefs:

 - a. Piers (non-terminus), walkways, finger piers, and platforms not associated with personal watercraft or boat mooring facilities, are limited to 4 feet in width. Piers

requiring handicap accessibility, documented by a Doctor's note, are limited to 6 feet in width over unvegetated areas.

- b. No decks or walkways parallel and directly adjacent to existing shorelines/bulkheads shall be constructed in water depths less than -2.5 feet MHW.
- c. Terminal structures (i.e. those structures located at the terminus of a walkway including T-heads and L-heads) are limited to a maximum of 300 square feet, excluding normal appurtenances, personal watercraft ramps/platforms, and boat mooring facilities. Rooftops over terminal structures shall cover no more than 50% of the T/L-head.
- d. Structures not associated with a walkway, such as decks constructed parallel and directly adjacent to existing shorelines/bulkheads, shall be considered terminal structures and shall not exceed 300 square feet in area.
- e. Normal appurtenances associated with piers such as such as step-downs, and fish cleaning tables or platforms shall not exceed a combined maximum of 200 square feet in unvegetated areas or 50 square feet in vegetated areas.
- f. A single boat mooring facility, boat shelters, and personal watercraft platforms with mechanically and/or pneumatically operated boatlifts, or cable or strap supported boat hoists, and roofs and/or covers of facilities are authorized under this general permit. These facilities are limited to a maximum width of 20 feet. The width of these facilities shall include the rooftop, all associated finger piers, piles, platforms, walkways, and open water within the footprint of the boat mooring facility. The width of boat mooring facilities constructed contiguous with a pier walkway shall not include the width of the walkways to access the terminal structure or terminal structure. These facilities shall be constructed with no sidewalls.
- g. Covered personal watercraft ramps/platforms with lifts/hoists that do not exceed a maximum area of 120 square feet are authorized under this general permit.

17. Special Aquatic Sites: Special Aquatic Sites typically refer to sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle and pool complexes. They are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region. The following restrictions applies to structures authorized under this general permit for special sites including vegetated shallows, wetlands, and oyster reefs:

- a. **Vegetated Shallows:** No portion of a boat mooring facility or personal watercraft mooring facility shall be constructed within 20 feet of an area that presently supports vegetated shallows.
- b. **Oyster Reefs:** Structures shall not be constructed over existing oyster reefs. If oyster reefs occur within 50 feet of any portion of the proposed structure, they shall be temporarily marked to help avoid any construction related impacts from occurring to the reefs. Oyster reefs may be delineated by identifying an oyster reef as a natural or artificial formation that is composed of oyster shell, live oysters, and other living or dead organisms; discrete, contiguous, and clearly distinguishable from scattered oyster shell or oysters; and is located in an intertidal or subtidal area.

- c. For projects that occur over other special aquatic sites defined in 40 CFR 230, excluding oyster reefs, (e.g vegetated shallows, wetlands such as marsh and mangrove, and mud flat habitat) shall adhere to the following guidelines:
- i. The pier height shall be a minimum of 5 feet above the MHW line or OHWM as measured from the top surface of the decking.
 - ii. Terminal structures shall not be constructed over mangroves (*Avicennia germinans* or *Rhizophora mangle*).
 - iii. Terminal structures over sea grass and/or marsh are limited to a maximum area of 160 square feet. This excludes normal appurtenances such as platforms, stairways, and fish-cleaning tables.
 - iv. Normal appurtenances such as platforms, stairways, or fish-cleaning tables shall not exceed a maximum area of 50 square feet.
 - v. Boat mooring facilities, including boat shelters, lifts or hoists, etc. and personal watercraft ramps/platforms, shall not be constructed over sea grass, marsh, or mangrove habitat.
 - vi. Pilings shall be installed in a manner which will not result in formation of sedimentary deposits ("donuts" or "halos") around the newly installed pilings. The number of pilings is limited to the minimum necessary, and the spacing of the pilings shall be a minimum of 10 feet on center unless shorter distances can further avoid sea grasses (e.g. patchy sea grass bed). Where special aquatic sites are more than 3 feet from the piling, jetting with a low-pressure pump may be used; high-pressure jetting is prohibited. The method of installing the pilings must be included in the application.
 - vii. No decks or walkways constructed parallel and directly adjacent to existing shorelines/bulkheads shall be constructed over areas that contain oyster reefs, emergent marsh, mangroves, or sea grasses.
 - viii. Deck boards must be spaced a minimum of one inch between boards to allow sunlight penetration to the water.
 - ix. Heavy equipment working in wetlands or mud flats must be placed on mats, or other measures must be taken to minimize soil disturbance. The method of ingress and egress of heavy equipment must be included in the application.

18. Modifications to Currently Existing Structures: Existing projects proposing modifications that continue to meet the terms and conditions of the General Permit may be modified by this general permit.

19. Replacement of Currently Existing Structures: Work associated with the authorized structure shall not replace any existing unserviceable structure until the unserviceable structure has been removed. Removal of existing unserviceable structures in association with the proposed work is authorized.

20. Abandonment: The permittee must maintain the structure authorized by this general permit in good condition and in conformance with the terms and conditions of this general permit. The permittee is not relieved of this requirement if the permittee abandons the authorized structure unless the permittee makes a good faith transfer to a third party. Should the permittee wish to cease to maintain the authorized structure for its authorized purpose and use; the permittee shall remove all components of the remaining structure and restore the area to pre-project conditions.

- 21. Pilings:** Pilings shall be jetted in using hand-held jetting nozzles or pile driven in. The structure shall not result in more than minimal impacts. The jetting activity of the pilings shall not impact any vegetated areas with suspended fill material.
- 22. Marked Utilities:** No work shall be performed until 30 days after notification of the owner or operator of any marked utilities in the project area.
- 23. Compliance:** The permittee is responsible for ensuring that whomever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of this general permit and any special permit-specific conditions included in any written verification letter from the Corps. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the permit. Any authorized work shall be properly maintained, including maintenance to ensure public safety and compliance with applicable permit conditions, as well as any activity-specific conditions added by the Corps to a permit authorization.
- 24. Site Inspection:** The permittee shall allow representatives from the Corps to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the permit authorization.
- 25. Clean Construction Equipment:** All construction equipment must be cleaned prior to entering the project area and cleaned before leaving the project area in order to prevent the spread of invasive species.
- 26. Property Rights:** This general permit does not convey any property rights, either in real estate or material, or any exclusive privileges and does not authorize any injury to property or invasion of rights or any infringement of Federal, State or local laws or regulations, nor does it obviate the requirement to obtain State or local authorization required by law for the activity authorized herein.
- 27. Texas Coastal Management Program Consistency:** Work authorized under this general permit shall be conducted to remain consistent with the Texas Coastal Management Program's Goals and Policies outlined in the Texas Administrative Code Title 31, Part 16, Chapter §501, Subchapter B.
- 28. RGP Terms and Conditions:** All activities identified and authorized herein shall be consistent with the terms and conditions of this permit. Any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit.
- 29. Other Authorizations:** This general permit will not be valid without all other state, local or regional authorizations required by law.

F. FURTHER INFORMATION:

- 1. Limits of this Authorization:**
 - a. This general permit does not obviate the need to obtain other federal, state, or local authorizations required by law;
 - b. This general permit does not grant any property rights or exclusive privileges;

- c. This general permit does not authorize any injury to the property or rights of others; and
 - d. This general permit does not authorize interference with any existing or proposed federal project.
- 2. Limits of Federal Liability:** In authorizing a project under this general permit, the Federal Government does not assume any liability for the following:
- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the US in the public interest;
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
 - d. Design or construction deficiencies associated with the permitted work; or
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
- 3. Reliance on Applicant's Data:** The determination of this office to authorize the activity under this general permit as not contrary to the public interest will be made in reliance on the information provided by the applicant.
- 4. Re-evaluation of Permit Decision:** This office may re-evaluate its decision to authorize an activity under this general permit at any time the circumstances warrant. Circumstances that could require a re-evaluation include, but are not limited to, the following:
- a. The applicant fails to comply with the terms and conditions of this permit;
 - b. The information provided by the applicant to support their permit application proves to have been false, incomplete, or inaccurate;
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision; or
 - d. Such a re-evaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of their permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office, and if the permittee fails to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.

FOR THE DISTRICT ENGINEER:

ROBERT W. HEINLY
CHIEF, POLICY ANALYSIS BRANCH
REGULATORY DIVISION, GALVESTON DISTRICT
FOR COLONEL TIMOTHY R. VAIL

(DATE)